

147 FERC ¶ 61,182  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;  
Philip D. Moeller, John R. Norris,  
and Tony Clark.

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act -- Rayburn Country Electric Cooperative, Inc.      Docket No. RM10-12-008

ORDER ON REQUEST FOR WAIVER OF ELECTRIC QUARTERLY REPORT  
REPORTING REQUIREMENTS

(Issued June 3, 2014)

1. In this order, the Commission finds that Rayburn Country Electric Cooperative, Inc. (Rayburn) is not required to file the Electric Quarterly Reports (EQR) given that it makes no reportable sales. We thereby dismiss as unnecessary Rayburn's request for waiver of the EQR reporting requirements set forth for non-public utilities in Order No. 768.<sup>1</sup>

2. As explained below, based on Rayburn's representations in its waiver request, it makes wholesale sales of electricity within the Electric Reliability Council of Texas (ERCOT) and all of Rayburn's wholesale sales outside of ERCOT have been made to Rayburn's member cooperatives. Rayburn is not required to file EQRs because Order No. 768 does not apply to entities that make wholesale sales of electric energy within ERCOT. In addition, wholesale sales made by a non-public utility cooperative to its members are excluded from the EQR reporting requirements under Order No. 768.

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<sup>1</sup> *Elec. Mkt. Transparency Provisions of Section 220 of the Fed. Power Act*, Order No. 768, FERC Stats. & Regs. ¶ 31,336, *order on reh'g*, Order No. 768-A, 143 FERC ¶ 61,054 (2013).

## I. Background

3. Order No. 2001<sup>2</sup> established EQR reporting requirements for all public utilities pursuant to section 205 of the Federal Power Act (FPA).<sup>3</sup> Under Order No. 2001, public utilities must electronically file EQRs summarizing data about their currently effective contracts (contract data) and wholesale power sales made during the reporting period (transaction data).

4. In Order No. 768, the Commission extended the EQR reporting requirements to non-public utilities that have more than a *de minimis* market presence. In applying EQR reporting requirements to non-public utilities, the Commission balanced the need to increase transparency with the burden associated with filing the EQR by uniformly adopting a 4 million MWh *de minimis* threshold for all non-public utilities. Specifically, non-public utilities that make 4 million MWh or less of annual wholesale sales, based on an average of the wholesale sales made in the preceding three years as reported in EIA Form 861, are exempted from the requirement to file an EQR.<sup>4</sup> In addition, Order No. 768 excluded from the EQR reporting requirements wholesale sales by a non-public utility cooperative to its members.<sup>5</sup> Thus, a non-public utility cooperative only needs to report “surplus” wholesale sales, i.e., wholesale sales made to non-members, in its EQRs.<sup>6</sup>

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<sup>2</sup> *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh’g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order No. 2001-G, 120 FERC ¶ 61,270, *order on reh’g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, FERC Stats. & Regs. ¶ 31,282 (2008).

<sup>3</sup> 16 U.S.C. § 824d (2012).

<sup>4</sup> *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at PP 54-57.

<sup>5</sup> *See id.* PP 22, 74; Order No. 768-A, 143 FERC ¶ 61,054 at P 30; *see also* 18 C.F.R. § 35.10b(b) (2013).

<sup>6</sup> *See* Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 22, *order on reh’g*, Order No. 768-A, 143 FERC ¶ 61,054 at P 30.

5. On February 28, 2014, Rayburn filed a request for waiver of the requirement for non-public utilities to file EQRs under Order No. 768 and section 35.10b of the Commission's regulations. Rayburn asserts that it is a generation and transmission cooperative that is not a public utility pursuant to section 201(f) of the FPA.<sup>7</sup> Rayburn states that it provides power and energy through wholesale sales to its five member rural distribution electric cooperatives in Texas on a full-requirements basis. Rayburn adds that all of the wholesale sales to three of its five member cooperatives and a large portion of the wholesale sales to the other two member cooperatives are sales within ERCOT and are ultimately used by the member cooperatives to serve such members' load in ERCOT. Rayburn maintains that only a small portion of its wholesale sales (less than 1 million MWh for each of the years 2010 through 2013) takes place outside of ERCOT (i.e., in the Southwest Power Pool) to two of its member cooperatives.

6. Rayburn notes that if it were to file an EQR, it would be reporting zero MWh in wholesale sales. As a result, Rayburn contends that waiver of the EQR reporting requirement is appropriate because the burden of compliance would far outweigh the benefits to the Commission of an EQR with zero MWh in wholesale sales.

## **II. Discussion**

7. As noted in Order No. 768, companies may request, on an individual basis, a waiver from the EQR reporting requirements.<sup>8</sup> Rayburn explains that it is subject to the EQR reporting requirements because it is a non-public utility that makes more than 4 million MWh of total annual wholesale sales. However, Rayburn asserts that its electric energy wholesale sales are within ERCOT except for the wholesale sales it makes to two of its five member cooperatives.

8. Order No. 768 does not apply to transactions for the purchase or sale of wholesale electric energy or transmission services within ERCOT.<sup>9</sup> Specifically, section 35.10b(a) of the Commission's regulations provides that "[t]he term [non-public utility] does not include an entity that engages in purchases or sales of wholesale electric energy or

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<sup>7</sup> 16 U.S.C. § 824(f).

<sup>8</sup> Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 191 (citing *Bridger Valley Elec. Assoc., Inc.*, 101 FERC ¶ 61,146 (2002)); *see also* Order No. 768-A, 143 FERC ¶ 61,054 at P 32.

<sup>9</sup> Order No. 768, FERC Stats. & Regs. ¶ 31,336 at P 23; *see also* 18 C.F.R. § 35.10b(a) (2013).

transmission services within [ERCOT].”<sup>10</sup> Accordingly, Rayburn’s sales within ERCOT are exempted from the EQR reporting requirement.

9. Under Order No. 768, sales made by a non-public utility cooperative to its members are excluded from the EQR reporting requirements but wholesale sales to non-members are considered “surplus” market sales that must be reported.<sup>11</sup> In Rayburn’s case, the wholesale sales it makes outside of ERCOT are to two of its member cooperatives; therefore, it is not required to report such sales in the EQR. Based on Rayburn’s representations that it makes no reportable sales, we find that Rayburn is not required to file EQRs. Thus, we dismiss Rayburn’s waiver request as unnecessary. Because our finding is based on the facts as presented by Rayburn, we remind Rayburn that should circumstances change such that it had reportable non-member sales, it would need to file EQRs or seek waiver of the EQR reporting requirements at that time.

**The Commission orders:**

We dismiss Rayburn’s request for waiver as unnecessary, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>10</sup> 18 C.F.R. § 35.10b(a).

<sup>11</sup> Order No. 768, FERC Stats. & Regs. ¶ 31,336 at PP 22, 74, *order on reh’g*, Order No. 768-A, 143 FERC ¶ 61,054 at P 30. *See also* 18 C.F.R. § 35.10b(c)(1) (2013).